BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, TORRANCE UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.	OAH CASE NO. 2010110325 ORDER GRANTING CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On November 24, 2010, CDE filed a Motion to Dismiss itself as a party to the action, alleging that it is not a responsible educational agency.[1] On December 1, 2010, Student, LACOE and TUSD filed an opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

[1] CDE's motion raised two other grounds for dismissal of Student's complaint, which are not addressed in this order as CDE's motion is granted on other grounds.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

In the complaint, Student alleges that CDE is an appropriate party because of its supervisorial oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilties Education Act (IDEA), as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint contends that CDE is an appropriate party due to LACDMH's refusal to provide students with mental services because of the Governor's October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq.

The complaint raises no claims against CDE that it denied Student a FAPE and seeks no remedies from CDE, other than for CDE to exercise its supervisorial authority to ensure that Student receives a FAPE. Further the complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. The United States District Court decisions that Student, LACOE and TUSD cite for the proposition that CDE is an appropriate party are not applicable. In those District Court and OAH decisions, the issue was which educational agency was responsible for providing

special education services to a parentless child's in which the Orange County Juvenile Court had not appointed for the child either a legal guardian or responsible adult.

In this case, Student is not a parentless child as his Parents retain legal custody of Student. Additionally, the issue of CDE's oversight of local education agencies to ensure their compliance with relevant special education law and regulations is outside the scope of OAH's jurisdiction. Finally, while LACOE and TUSD indicate that they are either unwilling or unable to perform duties normally conducted by LACDMH, that issue is not ripe for adjudication because LACDMH is presently providing Student with mental health services. Accordingly, CDE is not a necessary or proper party to the complaint, and its motion to dismiss as a party is granted.

ORDER

CDE's Motion to Dismiss itself as a party is granted. The matter will proceed as scheduled against the other remaining parties as presently scheduled.

Dated: December 3, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings